



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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DRAFT MINUTES FOR MALPRACTICE REPORTING SUBCOMMITTEE Held on Tuesday, November 4, 2008 9545 E. Doubletree Ranch Road • Scottsdale, Arizona

Subcommittee Members

Amy J. Schneider, M.D., F.A.C.O.G., Chair

Todd A. Lefkowitz, M.D.

Lorraine L. Mackstaller, M.D.

Paul M. Petelin Sr., M.D.

Germaine Proulx

CALL TO ORDER

The meeting was called to order at 12:15 p.m.

ROLL CALL

The following Subcommittee members participated telephonically: Amy J. Schneider, M.D., F.A.C.O.G., Todd A. Lefkowitz, M.D., Lorraine L. Mackstaller, M.D., and Germaine Proulx. The following Subcommittee member was absent: Paul M. Petelin Sr., M.D.

CALL TO PUBLIC

Jay Crutchfield, M.D., was present and spoke during the call to public. Dr. Crutchfield stated the lack of naming physicians in a settled medical malpractice suit under the guise of a corporation or employment of a corporation is a tremendous injustice and does not protect the public. Dr. Crutchfield expressed his availability as a reference to Subcommittee members.

Renee Coury was present to observe the meeting.

NON-TIME SPECIFIC ITEMS

Discussion Re: Malpractice Actions Settled on Behalf of Physicians

Dr. Schneider stated at the Board's Offsite Planning Meeting that the Malpractice Subcommittee was asked to investigate and clarify a hospital's duty to report to the Board regarding malpractice actions settled on behalf of physicians. Lisa Wynn, Executive Director, stated a legal opportunity exists for healthcare entities to settle or have a judgment that does not name physicians. Ms. Wynn also stated it is unclear the degree to which problematic physicians/incidences are being settled without notifying the Board. Lisa McGrane, Investigational Review Manager, stated A.R.S. §32-1451 requires hospitals to report any incidence of malpractice or unprofessional conduct to the Board and that a Substantive Policy Statement was recently passed regarding the reporting of those actions.

Dr. Schneider questioned whether a hospital would still have a duty to report if the Board already adjudicates a case. Jennifer Boucek, Assistant Attorney General, stated that A.R.S. §32-1451(A) states there is a duty to report to the Board any information that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct, or is or may be mentally or physically unable to safely engage in the practice of medicine. This covers a situation where there might be a malpractice settlement where a doctor is named and the hospital knows that the doctor was the reason for the settlement. Ms. Boucek stated there is a provision of A.R.S. §32-1451 that states the Board shall report any healthcare institution that fails to report, as required by statute, to that institution's licensing agency. Ms. Boucek informed the Subcommittee that North Carolina has a provision that imposes a civil penalty that the Department of Health Services can issue if a healthcare institution fails to report. Ms. Boucek stated that some institutions who are not interested in reporting may be willing to subject themselves to the potential liability of a civil penalty.

Ms. Boucek suggested that if the Board were to come across a case in which a healthcare institution entered into a malpractice settlement that did not name a particular physician who committed unprofessional conduct, the Board has the ability to go against a doctor of medicine at that institution who was involved in the decision or who had primary responsibility for reporting those types of incidents for unprofessional conduct for failing to report. Dr. Mackstaller suggested looking into how frequently this loophole is used and how egregious the issues are that settle without lawsuits. Ms. Boucek suggested that since the staff had already consulted with some hospitals' legal counsel, Board staff should also contact the Arizona Trial Lawyers Association to determine how frequently settlements are taking place in which the institution is not naming the doctors in settlement papers that are filed in court. Ms. Wynn questioned if any information can be gathered from looking at public court records of malpractice cases that did not name a physician and were not reported to the Board. Tina Geiser, Case Review Office Assistant Manager, stated there are an infinite number of superior court documents of lawsuits filed against hospitals that settle cases on behalf of physicians that do not distinguish whether the lawsuits have to do with vendors, nurses, contracts or malpractice incidences. Ms. Geiser also stated that disclosure statements, which are the best source of information, are not filed with the courts. Dr. Lefkowitz suggested the Board query the National Practitioner Data Bank (NPDB) or the Health Integrity Protection Data Bank (HIPDB) instead of going through court documents. Ms. McGrane stated hospitals that settle on behalf of physicians instead of naming them in the settlement are not reporting to the NPDB either.

Consideration of Possible Future Action Items

Ms. Wynn suggested the Board develop a Substantive Policy Statement (SPS) or guideline that would indicate that settlements on behalf of a physician by a healthcare entity would be considered evidence that a physician committed unprofessional conduct as stated in A.R.S. §32-1451. Dr. Schneider suggested combining language Robert Goldfarb, M.D., and Monty Lee, Licensing Enforcement Section Chief of the Attorney General Office, proposed at the Board's Offsite Planning Meeting. Ms. Boucek suggested that the Subcommittee could draft clarification in either an SPS, guideline or letter to hospitals that a duty to report still remains whether or not a physician is individually named in a malpractice settlement. She further advised that this may not be an issue that rises to the level of an SPS.

MOTION: Dr. Schneider moved for Board staff to prepare a Substantive Policy Statement using the language proposed at the Board's Offsite Planning Meeting for review at a future Subcommittee meeting.

SECONDED: Dr. Mackstaller

VOTE: 4 yay, 0 nay, 1 absent

MOTION PASSED.

The meeting was adjourned at 12:52 p.m.



Lisa S. Wynn, Executive Director